1950

File No. O. Constitution/50 pt. II

Legal Department.

A **BRANCH**

Subject:—

Opinions under the

constitution of India.

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C O N T E N T S.

Legal Department Volume No. O.Constitution/50. Pt. II.

Sr. No.	R.I./O.No.	Subject.	Pages.
	O.Constitution/50-II Date 5.6.50.	Opinions under the Constitution of India.	
1.	(Opinions given by R.L.A. to C.S.)	Question for consideration is how best to settle the income which is to be allowed to the nine Fendatory Jahagirdars in the Kolhapur State. Question of settling the Privy Purse or personal income of these Jahagirdars. Articles 112(3) (g) and 366(22) of the Constitution of India.	
2.	O.No. 7768/8.6.50.	Re: Govt's direction that the Associateship of the Indian Agriculaural Research Institute, New Delhi, should be recognisd as equivalent to M.Sc. (Agri) degree of the Indian Universities for the purpose of recruitment to posts under it which require special training in the subjects covered by the Associateship diploma of the Institute. Contention of the Bombay Public Service Commission that the above direction of Govt. amounts in effect to the modification of the recognised qualifications and in respect of ports which are within the purview of the commsssion requires prior consultation with the Commission under article 320(3)(b) of the Constitution of India Question ~~of the~~ R.L.A.whether ~~is not~~ the contention of the P.S.C. is correct.	
3.	O.No. 429-Conf1/14.6.50.	Re: Termination of services of a govt. servant who was appointed on temporary basis for a period of six months from the date he joins in the first instance or till a candidate selected by the P.S.C. was alletted to the Deptt. concerned for the purpose whichever was earlier. Question whether the person concerned can have any grievance under article 311(1) of the Constitution when his appointment was terminated by effluse of time.	

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4.	O. No. 7957/3.6.50	Questions: (1) Whether in view of the provisions of article 30(1) of the Constitution it would be competent for Govt. to prohibit either the C.B. Mission, Ahwa, or any linguistic group from maintaining Schools in the Dangs; (2) Whether it would be wrong for Govt. to refuse recognition to such school, and (3) Whether in view of the provisions of article 30(2) it would be competent for Govt. to refuse grant-in-aid to schools.
5.	R.I.No. 10595/21.6.50. O.No. 9405/6.7.50.	Re: Issuing of orders of execution of a person who was found guilty for an offence under Sec. 302 I.P.C. and sentenced to death and whose sentence was confirmed by the High Court but did not file an appeal to the supreme Court within three months after the order of the confirmation by the High Court. Articles 132, 134 and 136 of the Constitution of India.
6.	R.I.No. 5827A/4.4.50. 9844/50. O.No. 9417/6.7.50.	Re: Registration of one Mohamed Shaffi Usman as an Indian Citizen under Article 6(b) and 7 of the Constitution of India.
7.	R.I.No. 962-Conf1/2.5.50. O.No. 514-Conf1/8.7.50.	Question whether the State Govt. is competent to pass an order under Sec. 5 of the Bombay Public Security Measures Act, 1947 in relation to services connected with petrol industries, to be essential services. Entry 53 in List I in the new Constitution.
8.	R.I.No. 11716/8.7.50. O.No. 10029/15.7.50.	Re: Bill to amend the Bombay Land Revenue Code. Question whether it is necessary to issue notification under the fifth schedule to the constitution as it is proposed to apply the contemplated Act to the cheduled Areas.
9.	R.I.No. 12982/27.7.50. O.No. 11061/4.8.50.	Re: Copy of the reference made by the R.L.A. to the Advocate General in respect of the interpretation of article 286 of the Constitution of India. which provides for the powers of a State Govt. in respect of imposition of Sales Tax.

10.	R.I.No. 14066/31.7.50.	Re:.P. and S.D. No. 9721/34/27675-E dated 26th July 1950 forwarding copy of a letter from the Govt. of India, Ministry of Home Affairs, No. 51/92/50-Public dated 19th June 1950. Re: Establishment of a convention whereby an appointment to the High Office of Minister, whether at the centre or in one of the states, the incumbent should cease to hold any offices he may previously have held in other organizations e.g. directorships or active memberships in private companies or public corporations trade unions, local self governing institutions and so on.
11.	O.No. 8175/15.6.50.	Question whether Ministers can be regarded as non. officials.. Secs. 51(1) and 59(3) of the Government of India Act, 1935. Constitution of India (Please see R.L.A's No. 6305/6.7.48).
12.	O.No. 11378/10.8.50.	Note prepared by R.L.A. for H.C.M. regarding the draft rules of Business proposed to be made under Art. 166(3) of the Constitution.
13.	R.I.No. 11862/10.7.50.	Question whether the Raja of Jamkhindi who by receiving a yearly privy purse is at present a political pensioner and is in the employ of the state transport can be allowed by the State Govt. of Bombay to contest the General Elections as an independant candidate. Articles 102(1) and 191(1) of the Constitution of India.
14.	O.No. 12300/28.8.50.	
	R.I.No. 20555/11.11.50.	Re: P. and S.D. Endt. No. 9721/34-E dated 7.11.50 forwarding G. of I., Ministry of Home Affairs' letter No. 51/92/50-Public dated 25.10.55 Re: Convention to be followed in regard to appointment of Ministers.

16.	R.I.No. 15[illegible]0-Confl/18.7.50. D.No. 12726/6.9.50.	Question whether it is within the competency of the State Legislature to prohibite the export of opium outside the state other wise than across a customs frontier. Bombay Prohibition Act, 1949. Entry No. 42 in List Ix in the VIIth Sch. and Article 302 of the New Constitutions and Art. 304(b) of the constitution.
17.	R.I.No. 14855/9.8.50. O.No. 13602/26.9.50.	Question whether it will be possible for the Governor acting under article 348(2) of the Constitution to pass an order that a particular set of appeals before the High Court, Bombay shall be heard in regional languages. Article 345 of the Constitution.
18.	O.No. 19-L/28.9.50.	Re: Statement showing supplementary additional and excess expenditure for the year to be presented to the Legislature under Article 205 of the Constitution of India.
19.	O.No. 13901/3.10.50.	Question regarding guarantee for any ex gratia pension which will be subject to the vote of the Legislature Articles 200(3) and 203 of the Constitution of India.
20.	O.No. 99-L/11.10.50.	Question regarding making the services under the Local Authorities subject to rule of residence. Clause (3) of Article 16 of the Constitution of India.
21.	R.I.No. 17751/27.9.50. O.No. 14624/19.10.50.	Re: Taking over the management and maintenance of the three light houses out of the four of the Baroda State Govt. by the Central Govt. after declaring those three light houses as general light housed under Sec. 2(c) of the Indian Ligh House Act, 1927, and declaring the fourth ligh house to be local light house and thus declaring it to lie the responsibility of the provincial Govt. Question whether the procedure adopted by the Central Govt. is correct. Item if in the Union list in the VIIth Schedule to the Constitution of India.

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22.	O.No.201-L/26.10.50.	Question whether it would be legal to refuse the applicant's request for an advance from the Provident fund the ground that expenses incurred in connection with the marriage of an European, Anglo-Indian or Indian Christian subscriber to the Provident fund are not obligatory within the meaning of the Provident Fund Rules as this would amount to discrimination are the ground of religion or race only and would offend against Article 15(1) of the Constitution.
23.	R.I.No. 18983/17.10.50. O.No. 15542/6.11.50.	Question whether the view expressed by the F.D. that in view of article 266(1) of the Constitution of India it is not necessary to undertake legislation for the purpose of establishing the consolidated Fund of the State of Bombay.
24.	R.I.No. 16783/9.9.50. O.No. 15725/11.11.50.	Re: Interpretation of article 20(2) of the Constitution of India which lays down that no person shall be prosecuted and punished for the same offence more than once.
25.	O.No. 15846/14.11.50.	Question whether Govt. can grnat aid to the Seth Chunilal Sankalchand Jain Kanya Shala, Patan Distt. Mehsana which is not ppen for girls of other communities except jain Para (2) of Article 29 of the Constitution.
26.	R.I.No. 757-Conf1/1.11.50. O.No. 815-Conf1/16.11.50.	Question whether under the constitution Govt. of Bombay can conduct the Vaidik School, Kolhapur which trains Maratha Students to replace Brahmin Priests. Article 15,26,28(1),(2) and 29(2) of the Constitution.
27.	O.No. 18231/27.12.50.	Re: Liability of Union Proporty to taxed imposed by the State Government. Sec. 154 of the Government of India Act, 1935. Article 285 of the Constitution of India.

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Office of the R.L.A.

The question raised for the R.L.A's consideration is how best to settle the income which is to be allowed to the nine Feudatory Jaghirdars in the Kolhapur State.

2. The Jaghirdars are (1) Bavda, (2) Vishalgad, (3) Kagal Senior, (4) Kapshi, (5) Ichalkaranji, (6)Kagal Junior, (7) Torgal, (8) Sarlashkar Bahadur, and (9) Himmat Bahadur. A brief history of these Jaghirs will be found at pp. 219 to 227 of the p. & S.D. file No. 4384/46-I. All those Jaghirs were created during the period between the latter part of the 17th Century and the early part of the 18th Century. The Jaghirs of Vishalgadh and Bavda were created by Shivaji the Great. The Jahagirdars exercised civil and criminal jurisdiction and also controlled the police, revenue and forest administration in the Jaghir villages. Article 8 of the agreement entered into by the British Government with the Raja of Kolhapur on 20.10.1862 provides in regard to these Jaghirdars as follows:-

> " That certain of the higher Jaghirdars, such as the Pratinidhi of Vishalgadh, the Pant Amatya of Bavda, the Chiefs of Kagal, Ichalkaranji Dapsi, Torgal, the Sarlaskar, Narayan Rao of Kagal, Rama Bai, Walwa, Himmat Bahadur, should be considered as still in some degree under the supervision of the Political Agent, who should act, as far as circumstances will permit, in co-operation with the Raja's Government; and that all criminal cases within the jurisdiction of these Sardars, involving death, or imprisonment beyond 7 years, should be forwarded for trial before the Political Agent, for submission to Government. The supervision proposed to be retained over these Sardars, and the guardianship

of such of them as may be minors, by the British Government acting in concert with the Rajah, are not intended in any way to infringe the seignorial rights of the Raja, but merely to secure good government, and to prevent those disputes which in old days were frequently the cause of disturbance and bloodshed."

This article makes it clear that these Jaghirdars had a direct nexus with the Political Department of the Government of India, although the Maharaja of Kolhapur had seignorial rights over them. In 1903, the residuary jurisdiction in the feudatory Jaghirs was left to the Court of the Maharaja of Kolhapur except in certain specified cases. In the year 1930 what is described as the primary exercise by the Crown of the powers of supervision over these feudatory Jaghirdars was transferred to the Maharaja of Kolhapur. Nevertheless the exercise of jurisdiction - Civil and Criminal - by the Jaghirdars was left undisturbed and the position as it obtained before the transfer was substantially left unaffected. The British Government did not completely disappear from the picture. Thus it was provided in the Notification issued by the Kolhapur Darbar as an accompaniment to Huzur Office Political Department Notification No. 1 dated the 31st May 1930 that in the event of its being necessary owing to mal-administration or any other cause to withdraw any of the guaranteed rights, dignities, powers or privileges to which a feudatory Jaghirdar is entitled; or to debar from succession to the Jaghir the heir-apparent or any other member of the family of such feudatory Jaghirdar who, according to law and usage custom is entitled to succeed, the matter will be decided with the previous approval of the British Government. Opportunity of being heard be-

fore the Maharaja of Kolhapur and the Resident was also preserved. Similarly, no change in or modification of the procedure by which suits against the Feudatory Jaghirdars personally were disposed of by the joint Court of His Highness and the Resident at Kolhapur was to be made except with the approval of the British Government. In cases of minority the period of minority was not to be prolonged without the consent of the British Government. On attaining majority the Jaghirdar was to be invested with powers etc., subject to his accepting conditions which were to be drawn in consultation with the Resident at Kolhapur. The minority administration was tobe be carried in close co-operation with the Resident at Kolhapur.

3. Although, therefore, the British Government formally divested themselves of the primary exercise of supervision in substance that supervision continued as before and there have been instances where it was actually exercised.

4. A few months before the merger, by Notification No. 35 dated the 10th November 1948, the Civil Criminal, Revenue and other administrative powers which have been conferred on the Feudatory Jaghirdars were withdrawn and it was declared that they reverted to the Maharaja of Kolhapur. It was also further declared that the Jaghirdars would continue to be entitled to the Saranjams of all the land-revenue (including the fiscal benefits arising from the Kadim lands in their Jaghirs and forest revenue therein as heretofore in accordance with the Sanads granted to them long ago and continued to them uniterruptedly for many generations). These Saranjam revenues shall be held by the Jaghirdars in the same way as other holders of Saranjams in the State and subject to the conditions laid down by the laws or rules made thereunder in respect of service commutation, education cess etc.

The Jaghirdars ceased to have any claims to any revenues in respect of the Jaghirs other than the above mentioned Saranjam revenues. However, the personal rights, privileges, dignities and honours were guaranteed. It was directed that lists of private and personal property claimed by the Jaghirdars should be submitted and the claims should be adjudged. It appears from the papers that the Saranjam revenue would be about 95% of the revenue from Land revenue and forests. Owing to the excessive nature of these grants and for other reasons this arrangement was not accepted by the Chief Administrator nor by the Government of Bombay.

5. The question of settling the Privy Purse or personal income of these Jaghirdars still awaits solution.

6. The view has been correctly taken in the P. & S.D. letter No. 4334/46-I dated the 28th September 1949 that the historical status of these Jaghirdars was similar to the status of Talukdars the semi-jurisdictional Chiefs of Gujerath.) They have almost all the attributes of a Ruler. As was observed in the case of Duff Development Company Ltd., v. Government of Kelantan (1924. Appeal Cases. 797 at p. 814), "It is obvious that for sovereignty there must be a complete independence, ~~Etcetera words~~ not in the least necessary that for sovereignty there should be complete independence. It is quite consistent with sovereignty that the sovereign may in certain respects be dependent upon another power; the control, for instance, of foreign affairs may be completely in the hands of a protecting Powers and there may be agreements or treaties which limit the powers of the sovereign even in internal affairs without entailing a loss of the position of a

X it is necessary that for sovereignty there should be certain amount of independence but it is not in the least necessary that for sovereignty there should be complete independence.

sovereign Power." Although these Jaghirdars were feudatories of Kolhapur they enjoyed almost all the attributes of a ruler or a ruling prince. It seems that they were in effect treated as ruling Princes for the purposes of section 86 of the Code of Civil Procedure in respect of immunity from suits in British India (vide Kashibai Ajubhai v. Himatsingji. VIII Indian Law Reports (Bom). 415. & 21. Bom. L.R. 376). A suit against them personally lay only in the Joint Court of the Maharaja of Kolhapur and the Resident. Furthermore, it seems that they could be treated as rulers within the meaning of that term as defined in section 311 of the Government of India Act, 1935. A "Ruler" was therein defined in relation to a State to mean "the prince, chief or other person recognised by His Majesty as the ruler of the State" and "Indian State" was defined to mean" any territory not being part of the British India which His Majesty recognizes as being such a State whether described as a State, an estate or Jaghir or otherwise." It is apparent from the course of the history summarised before that His Majesty's Government did exercise supervisory powers and that the feudatories were not entirely under the control of the Maharaja of Kolhapur even after 1930. They had independent existence, they enjoyed Civil and Criminal jurisdiction and other attributes for an independent administration including even the Police administration prior to 1930. It must, therefore, be said that right up to November 1949, they substantially continued to be rulers although Kolhapur may have seignorial rights over them which had been gradually enlarged. In respect of the income which they enjoyed they were treated more as rulers than as Saranjamdars or Jaghirdars for they were granted 25% of the revenue subject to a minimum of Rs. 20,000/- per annum. That is, in other words they were granted a regular privy purse.

The question of their private property also came up after the Maharaja of Kolhapur decided to convert them into Saranjamdars. In other words their problems were similar to those of other rulers. Since the Chief Administrator and this Government have declined to accept their conversion into Saranjamdars, in settling the Privy Purse we could proceed on the footing that their status continued as before. If the Government of India were then so inclined they could have on the basis of that status taken separate agreements of merger from these Jaghirdars as was, in fact, done in the case of the Gujarath Talukdars, who were in no way superior in status to the Kolhapur Jaghirdars. That was, however, not done and today they cannot certainly be described as rulers (vide definition of 'Ruler' in clause (22) of article 366 read with article 291 of the Constitution of India). The merger having been accomplished and the entire area of the Kolhapur State including the area of the Jaghirs having become an integral part of the State of Bombay, there is now no scope for taking any kind of agreement from the Jaghirdars.

7. There can, however, be no legal objection to settling a Privy Purse on the lines suggested in the P. & S.D. letter. It is true that the Privy Purse so settled will not get all the protection guaranteed by article 291. However, it will be permissible for the Government of India to settle the privy purse upon the Jaghirdars and to make it even a charge by appropriate legislation upon the consolidated fund of India under article 112(3) (g); or in terms of the agreement the expenditure can also be charged on the consolidated fund of the State of Bombay. Having regard to the origin, history and status of these Jaghirdars it would

seem more expedient that the privy purse should be settled on them and charged on the consolidated fund of India or of the State of Bombay rather than that they should be converted into Saranjamdars on the terms declared by the Maharaja of Kolhapur prior to the merger. Similarly, the settlement of the private property of the Jaghirdars should also be completed if that has not already been done by the Kolhapur Government.

Sd/- P.M.Lad.
5.6.50

Remembrancer of Legal Affairs.

Chief Secretary.

V.M.D./16.7
40.

Office of the R.L.A.

Government in the Resolution No. 206/46, dated the 13th February 1950 have directed that the Associateship of the Indian Agricultural Research Institute, New Delhi, should be recognised as equivalent to M.Sc. (Agri.) degree of the Indian Universities for the purpose of recruitment to posts under it which require special training in the subjects covered by the Associateship diploma of the Institute. The Bombay Public Service Commission in their letter of 30th March 1950, at p. 23 ante contends that the G.R. referred to amounts in effect to the modification of the recognised qualifications and in respect of posts which are within the purview of the Commission requires prior consultation with the Commission under article 320(3)(b) of the Constitution of India. The question for R.L.A's consideration is whether the contention of the Commission is correct.

2. Attention is invited to R.L.A's opinion No. 11094, dated 5th October 1949 in which it is stated that by "principle" is meant a general law or rule adopted or professed as a guide to action. If in respect of posts which are within the purview of the Commission the qualification of M.Sc. (Agri.) degree of the Indian Universities has been prescribed for the purpose of appointment to these posts that is a rule adopted or professed as a guide for making appointment to these posts. The recognition of any other qualification as equivalent to the M.Sc. (Agri.) degree in effect amounts to laying down a principle in modification of the one already adopted for such purpose, and, therefore, so far as the posts within the purview of the Commission are concerned, it will be necessary to consult the Public Service Commission. The contention of the Public Service Commission is, therefore, correct.

Sd/- P.M.Lad.
7.6
Remembrancer of Legal Affairs.

U.R. to P. and S.D. , No. 7763, dated the 8th June 1950.

Office of the R.L.A.

Shri Kodumal was appointed by order of the Governor of Bombay to the post of Deputy Engineer in charge of Dairy Farm, Sub-Division ~~Andheri~~ of the Milk Plan, Construction Division and the notice terminating his services has been given by the Milk Commissioner, Bombay. Article 311 clause (1) of the Constitution of India provides that no Government servant shall be dismissed or removed by any authority subordinate to that by which he was appointed. The termination of services of Mr. Kodumal involve neither dismissal nor removal from service. Consequently article 311 clause (1) would not be available to him. Besides, it appears that no notice ~~x~~ to terminate his services would appear necessary, for his appointment being purely temporary for six months from the date of his joining in the first instance or till a candidate selected by the Bombay Public Service Commission was alletted to the department for the purpose, whichever was earlier and that period of six months having already expired, his appointment would stand attomatically terminated. Consequently even assuming that ar termination of service would amount to removal within the meaning of article 311 clause (1) of the Constitution of India, it appears that Mr. Kodumal can have no legitimate grievance when his appointment was terminated by efflux of time.

Sd/- P.M.Lad.
13.6
Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 429-Confl., dated the 14th June

V.M.B./16.7
4c.

Office of the R.L.A.

The questions for consideration are —

(1) Whether in view of the provisions of article 30(1) of the Constitution it would be competent for Government to prohibit either the C.D. Mission, Ahwa, or any linguistic group from maintaining schools in the Dangs;

(2) Whether it would be wrong for Government to refuse recognition to such school; and

(3) Whether in view of the provisions of article 30(2) it would be competent for Government to refuse grant-in-aid to schools.

2. Article 30(1) of the Constitution lays down that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. The object of the article as stated by the Hon. Dr. Ambedkar during the course of the debate on this article in the Constituent Assembly is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State should not by law impose upon it any other culture which may be either local or otherwise. But the article does not impose any obligation or burden upon the State. (p. 923 of Constituent Assembly Debates of 8.12.48). Nevertheless, the article gives the linguistic minorities a right to maintain their schools at their own cost. Therefore the view taken by Secretary, R.D. that it would not be competent for Government to prohibit the Mission or any linguistic group to maintain schools in the Dangs is correct.

3. Section 39(1) of the Bombay Primary Education Act, 1947, lays down that every private school which fulfils the conditions prescribed by rules in this behalf shall be entitled to recognition as an approved school. One of the conditions required for recognition of such school under rule 107 of the Bombay Primary Education Rules, 1949, is that it must satisfy the need of a school in the [illegible] locality. Under rule 109(2) a recognition already granted may be withdrawn on the ground that a public school is opened in the same locality

and another school is not considered necessary or for other reasonable and sufficient cause. Under section 10A(2) Government has taken upon them the responsibility to provide primary schools in a district like the Dangs. If sufficient number of schools are established by Government to satisfy the need of the locality it would be possible to refuse recognition to any private school or to withdraw any recognition already granted to any such school. Rule 109(2) does not seem to conflict with Art. 3

4. Article 30(2) lays down that the State shall not in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. As stated above under this article no burden is cast upon the State to give financial assistance to schools maintained by minorities. The only restriction cast is that no discrimination should be made in giving grant-in-aid to schools. As the policy of Government is not to give grant-in-aid to any private school in the Dangs the question of discrimination under article 30(2) or under any other article of the Constitution does not arise. The view taken by Secretary, E.D. that such policy is not hit by article 30(2) is also correct.

Sd/- P.M.Lad.
12.6
Remembrancer of Legal Affairs.

U.R. to E.D., No. 7957, dated the 13th June 1950.

V.M.D./16.7
40.

Office of the R.L.A.

Under Article 134(1) of the Constitution of India an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India, if the High Court -

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) certifies that the case is a fit one for appeal to the Supreme Court.

Under Article 136(1), notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

It is clear from these provisions that appeals falling under sub-clauses (a) and (b) of clause (1) of Article 134 are required to be lodged in the Supreme Court within 60 days from the date of the judgment of the High Court (see Order XXI, Rule 1, of the Supreme Court Rules). In cases of criminal appeals other than those falling under sub-clauses (a) and (b) of Article 134(1), two courses are open to the convict;

(i) to apply for a certificate to the High Court under sub-clause (c) of Article 134(1) within 90 days from the date of the judgment or order of the High Court (see Rule 165P of the Bombay High Court Rules) and where a certificate is granted by the High Court, to appeal to the Supreme Court within 30 days from the date of the grant of the certificate (see Order XXI, Rule 1, of the Supreme Court Rules); but if the certificate is refused by the High Court, to apply within three months of such refusal to the Supreme Court after special leave to appeal (see Order XIII, Rule 1 read with Order XXI, Rule 2 of the Supreme Court Rules);

(ii) to make a petition directly to the Supreme Court for

for special leave to appeal within three months from the date of the judgment or order sought to be appealed from (see Order XLVI, Rule read with Order XXI, Rule 2, of the Supreme Court Rules).

The Supreme Court has power to extend the time for sufficient cause in cases where an application is directly made to the Supreme Court for special leave and in cases where such petition is made on the refusal of leave to appeal by the High Court.

It is however, clear from these provisions that in cases where the convict does not resort to either of these two courses within the period of three months from the date of the judgment or order of the High Court, his remedy would ordinarily be barred after the lapse of that period and there would be no legal objection to taking action for executing the death sentence.

It may, however, be noted that the interval provided for under the aforesaid provisions between the date of the order of death sentence and its ultimate execution appears to be very long involving unnecessary anguish to a convict awaiting death sentence. In this connection attention is drawn to the fact that under Rule 125 of the Criminal Manual issued by the High Court of Bombay, in confirmation cases and references where the offence involves a death sentence, one typed copy of the record and proceedings including the judgment or charge to the jury are required to be despatched to the High Court within six days of the decision. Under article 160 of the Indian Limitation Act, amended by section 8 of the Criminal Procedure Code Amendment Act, 1943, the period of limitation for an appeal from a sentence of death passed by a High Court in the exercise of its original criminal jurisdiction is 7 days from the date of the sentence. These provisions may be

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brought to the notice of the Supreme Court and, if possible, the Supreme Court may be requested to consider whether, in order to avoid undue mental strain to a convict awaiting a death sentence, it would not be expedient to reduce the limitation for ~~filing~~ filing appeals or applications for special leave.

Sd/- P.V.Lad.
6.7
Remembrancer of Legal Affairs.

U.R. to H.D. No. 9405 dated 6th July 1950.

V.H.D./16.7
/c.

Office of the R.L.A.

The Constitution of India, Articles 6(b) and 7 : Registration of one Mohamad Shaffi Usman as an Indian Citizen.

The applicant, it appears, has secured a permanent permit and can, therefore, be considered as having returned to India under a permit for permanent return within the meaning of the proviso to article 7 of the Constitution of India. If so, in virtue of the said proviso he shall, for the purposes of clause (b) of article 6, be deemed to have migrated to India after the 19th July 1948. He has, therefore, rightly applied for registration as a citizen of India under article 6(b)(ii) and it is for the Collector, who is the officer appointed by the Government of India in that behalf, to decide whether the applicant should be registered or not as a citizen of India.

2. Before granting the application the Collector may take into consideration the contradictory statements made by the applicant and consider whether they affect his suitability for registration as a citizen of India. In his application for registration dated 25.1.1950 the applicant xxx says that he has no children, whereas in his application for permanent permit dated 26.10.1949, made to the High Commissioner for India in Pakistan he has made a statement that his wife and children stay in Poona. Similarly in that application he says that he has been residing in Poona for the last 22 years i.e. since 1926, but in his application of 25.1.1950 he has made a statement that he was born on 22.6.1929. An enquiry as regards the present whereabouts of the applicant's family members seems not desirable. If they are/xx in Poona, and if no satisfactory explanation of that is forthcoming, or if they are shown to be in Pakistan it will be a matter xxx for consideration whether he should be granted registration as an Indian.

Sd/- P.M.Lad,
5.7
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 9417, dated the 6th July 1950.

V.M.D./16.7
4a.

Office of the R.L.A.

Entry 53 in the Union List, to which a reference has been made by Secretary, Home Department in his note on page 128, corresponds to entries 32 and 36 in the Federal Legislative List in the 7th Schedule to the Government of India Act, 1935. Entry 53 in the Union List refers to petroleum and petroleum products without any qualification. The content of the entry is wide enough to include possession, storage and transport of petroleum and petroleum products. But although "petroleum and petroleum products" fall in the Union List, as already pointed out in R.L.A.'s opinion No. 672-Confl. dated 11th December 1948, the supply and distribution of petroleum and trade and commerce therein specially for the purpose of maintaining public order and also for maintaining supplies essential to the community are subjects which come within List II; and under section 5 of the Bombay Public Security Measures Act, the State Government will have the right to regulate the employment connected with these matters, although, incidentally, that may affect the employment connected with petroleum and petroleum products. It would therefore be legally feasible, as pointed out in the R.L.A's opinion referred to above, to notify the employment under petroleum companies.

Sd/- P.M.Lad.
S.7
Remembrancer of Legal Affairs.

U.R. to H.D. Confl. No. 514, dated the 8th July 1950.

Office of the R.L.A.

The question raised for the R.L.A.'s consideration is : whether Ministers can be regarded as non-officials.

2. In the case of Emperor v. Sibnath Banerjee (1945) F.C.R., 195, decided in appeal by the Privy Council, Ministers were held to be officers sub-ordinate to the Governor on the ground that while the Ministers may have duties to the Legislature, the provisions of section 51(1) of the Government of India Act, 1935, as to the appointment, payment and dismissal of Ministers and section 59(3) and (4) of the said Act and the Business Rules made by virtue of rule 59, placed beyond doubt that a Ministers is an officer sub-ordinate to the Governor. The Constitution of India has not affected the view taken by the Privy Council in the above case. (See articles 164, 166 and 167). Since Ministers are officers ~~are affirmed~~ sub-ordinate to the Governor they cannot be regarded as non-officials.

3. Moreover, in view of the position stated in this Department U.O. No. 6305 dated the 6th July 1943 (copy attached), and the observations of the Honourable the Premier referred to in the said U.O., it may not be considered desirable for a Minister to accept membership of the Advisory Council.

Sd/- P.N.Lad.
15.6
Remembrancer of Legal Affairs.

U.O. to L.S.G. & P.H.D. No. 8175. dated the 15th June 1950.

The draft rules of Business sent by the Hon'ble the Deputy Prime Minister proposed to be made under Art. 166(3) of the Constitution are open to objection from two main points of view:-

(1) They are not in conformity with the Constitution; and

(2) They will give rise to difficulty in the working of the administration.

As regards the first point, such rules as Rule 31 which provides for the submission of cases to the Governor before the issue of orders would militate against the Constitution. It is no doubt true that the various articles of the Constitution refer to the functions of the Governor. But that does not mean that every order of the Executive of the State must be approved by or emanate from him before issue. The articles refer to the functions of the Governor, as under art. 154(1) it is provided that the Executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him but such exercise must however be in accordance with the Constitution. Art. 163(1) provides that in the exercise of his functions the Governor must be guided by the aid and advice of the Council of Ministers at the head of which will be the Chief Minister. That article, no doubt, refers to the discretionary powers of the Governor. But according to the Constitution as it stands, the exercise of such discretionary powers has reference to the Sixth Schedule which relates to Assam. So far as the State of Bombay or the other Part 'A' States are concerned, the discretionary powers of the Governor will ordinarily have no

relevance . . . .

relevance. It would, therefore, follow that in the State of Bombay and other Part 'A' States every function of the Governor except a few referred to below must be guided by the aid and /advice of the Council of Ministers and there cannot be any case in which he is entitled to exercise sh his sole discretion or individual judgment.

2. The Constitutional position of the Governor was made clear when the Constitution was being discussed in the Constituent Assembly. The question directly arose in the Constituent Assembly when it decided whether the Governor should be an elected or nominated person. The Drafting Committee had left the question open and had kept both the alternatives before the Constituent Assembly. Although it may not be permissible in Courts to refer to the Debates in the Legislatures to ascertain the intention of the Legislature in construing the meaning of the words used in an enactment, a reference to such Debates is not only permissible but would be necessary when an authority empowered by the Legislature is exercising its powers to frame rules or regulations for the purpose of carrying out the purposes of the enactment. It will, therefore, be relevant to refer to the discussion in the Assembly on the point. H.C.H. (Hon'ble Mr. B.G. Kher) in Constituent Assembly Debates Vol. VIII No. 11 at 435 is reported to have stated as follows:-

" Why do we want the Governor? Because, Sir, he represents the State; the Premier is there by virtue of his being the leader of the largest party in the House; he is to be held responsible for whatever happens in the administration. So far as the Governor is concerned, we have given him very few powers. But I do not agree with the comment

that . . .

that he is a mere figurehead; a figurehead is capable neither of good nor of bad. I want to submit to the House, Sir, that a Governor can do a great deal of good if he is a good Governor and he can do a great deal of mischief, if he is a bad Governor, in spite of the very little power given to him under the Constitution we are now framing. The powers that we propose to give him, and the functions that we assign to him, are very few, such as summoning and dissolving the Assembly, to give assent to the Bills passed by the Assembly, to act as representative of the State, to nominate the Premier after the general election or the resignation of the Ministry, to represent the province on ceremonial occasions and such power as we give to act in an emergency. He is the symbol of the State and we have found in actual practice that if he is an active Governor, a good man, he can, by means of getting into touch with opponents of the party which is in power, reconcile them to a good number of measures, and generally, by tours and other means make the administration run smoothly. Similarly, he can do a great deal of mischief. I believe, therefore, to have as a Governor a person who is elected on a wider franchise to have at head of the Province person who is supposed to be more ~~xxx~~ representative than the Premier would be a mistake."

To the same effect are the observations of several other members who spoke on the occassion.(See Dr. P.K.

Sen's

Sen's speech at p. 445 of Vol. VIII. No. 12; Mr. K.M. Munshi at p. 453; Mr. V.T.Krishnamachari, p. 460; Mr. Shibban Lal Saxena p. 493 Vol. VIII. No. 13). The above discussion clearly shows that the Constituent Assembly decided to have a nominated Governor on the express understanding that his position was to be analogous to that of a Constitutional monarch in England. Asquith describes the position of the King in a memorandum written in 1913 thus :-

> " We have now a well established tradition of two hundred years that in the last resort, the occupant of the throne accepts and acts on the advice of the ministers . . . . He is entitled and bound to give his ministers all relevant information which comes to him to point out objections which seem to him to be valid against the course which they advise; to suggest (if he thinks fit) an alternative policy. Such intimations are always received by ministers with utmost respect and considered with more respect and deference than if they proceeded from any other quarters. But, in the end, the Sovereign always acts upon the advice which ministers after (if need be) consideration, feel it their duty to offer. They give that advice well knowing that they can, and probably will, be called upon to account for it by Parliament." (Iver Jennings 'Cabinet Government' p. 259)

As pointed out by K.C.J. in his speech referred to above that "powers which we (i.e. the Constitution) propose to give him and the functions which are assigned to him are very few, such as summoning and dissolving the Assembly; to give assent to the Bills passed by the State Assembly, to act as representative of the . . .

of the State, to nominate the Premier after the general election or to accept the resignation of the ministry, to represent the province on ceremonial occasions and such power as we give him in an emergency." (See also Shukla on Constitution of India p. 157). I this is the position which is assigned by the Constitution to the Governor, it will be illegal to provide by rules made under art. 166 of the Constitution that certain cases should be submitted to him before the issue of orders. As pointed out by B.L.A. in his Opinion U.R. No. 11566 dated the 3rd December 1947, this does not apply to cases where by the Constitution itself the Governor has to sign certain orders or decisions.

3. It may perhaps be urged that the draft rule 31 is being framed to enable the Governor to exercise his power under art. 167 of the Constitution. Clause (a) of that article requires the Chief Minister to communicate to the Governor all decisions of the Council of Ministers. This clause would not, therefore, warrant a provision in the rules for the submission of cases before decision. Clause (a) relates to the furnishing of information. The clause is wide but would not necessarily imply that information regarding any matter before decision s can be called for by the Governor. Clause(c) is the only provision on which some reliance may be placed in support of the draft rule 31 and it may be argued that in order to enable the Governor to exercise his powers under that clause, it is necessary for him to peruse certain cases before decision. In the first place, the draft rule 31 is not restricted to cases decided by a single minister. If any of the cases enumerated in the rule are decided by the

Council

Council of Ministers, there is no occasion for the Governor for the exercise of his powers under art. 166(c). Secondly, with due respect to the framers of the Constitution, in inserting clause (c) in art. 167 they appear to have ignored the express provision in art. 164 which provides for the collective responsibility of the Ministers and states that they would be responsible to the Legislative Assembly of the State. Even if, therefore, by way of an executive arrangement it may be provided that a minister may give decision in certain cases, the whole Council of Ministers is collectively responsible for the decision and in law there exists no such thing as the decision of a single minister. Thirdly, the scope of art. 166(3) must, in the light of the other provisions in the Constitution, be very limited. Art. 166(3) corresponds to art. 78(c) which relates to the similar powers of the President. In 'Constituent Assembly Debates Vol. VIII No. 14 p. 546, Dr. Ambedkar observes as follows:-

> " If for instance, the Governor-General on seeing the weekly summaries sent up by the departments finds that a Minister, without reference to the Cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General is empowered to say that this particular decision which has been taken by an individual Minister without consulting the rest of the Ministers should be reconsidered by the Cabinet?"

To the same effect are the observations of Mr. K.M. Munshi on art. 166 at Constituent Assembly Debates Vol. VIII No. 14 p. 541-542. But none of the speakers in the Constituent Assembly has gone to the length

of . . .

of stating that the Governor will be empowered to call for any papers and to direct that it shall be decided by the Council of Ministers. For the above reasons the draft rule 31 is not consistent with the Constitution and will not be intra-vires.

4. The draft rules contain such rules as rule 7 and others which suggest that an individual Minister is competent to pass orders on matters relating to the administration of the State. The draft rules are Statutory rules and will have to be strictly consistent with the Constitution. Art. 163 of the Constitution provides that it is the Council of Ministers which is to aid and advice the Governor in the exercise of his functions. It would, therefore, be wrong to provide in statutory rules made under art. 166 that an individual minister is competent to pass orders. This point was fully considered when the Business Rules under sec. 59(3) of the Government of India Act, 1935, were being framed and although under that Act the collective responsibility of the ministers was referred to in the Instrument of Instructions to the Governor and was not expressly inserted in the Constitution as it is done now in art. 164 (c). The India Office in their letter No. P. & J. (C) 6377 dated the 5th May 1936 observed as follows:

**Pol. & Ref. Dept. File No. 153-VI p. 55. Slip.A.

> Since the whole Act (i.e. the Government of India Act, 1935,) and the Instrument of Instructions are based on the theory of collective ministerial responsibility and upon the fact of possession by the Governor of the entire executive authority of the Province, it seems open to serious question whether (whatever may be found desirable or defensible

defensible on practice) a provision in Statutory rules which recognizes the right of individual ministers to dispose of cases in the name of the Governor without reference to the Governor or to their colleagues would be consistent with the general policy of the Act or indeed be intra-vires".

The above observations apply with greater force to Business rules under the present Constitution which expressly provides for collective responsibility in the Constitution itself. So far as the present Bombay Business Rules are concerned, the rules were adapted from the rules which were made under sec. 59 of the Government of India Act, 1935. The Rules themselves set out merely general principles, but Instructions which are supplementary to the Rules and which are were executive orders provide for various details. Though Instruction No. 3 provides for certain cases to be disposed of by individual Ministers Instruction No. 12 makes it clear that cases of importance must be disposed of by the Cabinet or the Council of Ministers. Thus, in fact, so far as the Bombay State is concerned, there is no scope for the exercise of the powers by the Governor under art. 167.

5. The second point on which the draft rules are open to objection from a practical point of view is that they are not in general terms as the present rules (i.e. those adapted from the rules made under the Government of India Act, 1935,) are, but purport to deal in detail with various administrative matters. The rules to be made are Statutory and when the decisions or orders of Government are challenged they will have to be relied upon in Court ...

in Court to support these decisions or orders. This actually occurred in a case in the Bombay High Court in P.V. Rao v. Ahmed Haji (A.I.R. - 1949- Bom. 123). In that case the authority of an Assistant Secretary to authenticate and sign an order on behalf of Government was challenged. Reliance then had to be placed on Business Rule 13 which gives him such authority. If, therefore, the Business Rules are drafted in a manner to provide for details, it is likely that any omission, however, unintentional or however insignificant, is likely to invalidate the decision or order. This point was also considered by the India Office in their letter of 6th May 1936 and all the Provinces were advised not to include minute details in the Business Rules. The Provinces were told to confine Statutory rules proper so far as possible to matters of general principle and to avoid meticulous multiplication of detail. At the same time the India Office made it clear that the framing of Business Rules in a general form does not preclude the insertion of additional executive instructions to supplement those rules. The present Bombay Business Rules are adapted from the rules made under the Government of India Act, 1935, and contain both the rules and instruction. The instructions made under the rules have not the same Statutory force as the rules have. The instructions contain provisions enabling individual ministers to give orders or decisions in certain cases. They also contain provisions for cases to be submitted to the Governor. The validity of these instructions will not be tested by the same principles by which the Business Rules which are Statutory will be tested. On the whole, therefore, it will be desirable to confine the Business Rules to the same general principles as was done in 1937 and to leave details to

Instructions. Moreover, the Draft Rules, particularly draft Rule 31 enabling the Governor to require certain cases to be shown to him before the issue of orders will furnish a scope for interference in various matters of administration in which as a Constitutional Executive head, he should not interfere. In this connection clauses (vii) and (viii) which relate to the appointment, punishment etc. of Gazetted Officers are open to objection. Under the Government of India Act, 1935, these matters were specially reserved for the consideration of the Governor (See sec. 241(5) of the Government of India Act, 1935), when the British Parliament was under an apprehension that the interests of services would not be safe in the hands of Ministers and when the matters relating to Services were to be governed by Rules to be made by various authorities. Under the present Constitution the Legislature from which the Ministers are to be chosen has power to make provision for the recruitment and conditions of service of Government Servants (see art. 309). It will not, therefore, be proper to make a rule requiring that orders or decisions regarding the appointment and other matters of all Gazetted Servants should be shown to the Governor before they are issued or made.

6. For the above reasons it is not necessary to criticise in detail other Rules. For the most part they merely repeat the present Business Rules and Instructions. A comparative statement showing the draft Rules and the corresponding present Bombay Rules and Instructions is appended. It will be clear from what has been stated before and the appended statement that the present Bombay Business Rules provide substantially for all matters proposed to be

incorporated. . .

incorporated in the draft BusinessRules and at the same time are free from objections either from the Constitutional or practical point of view stated in this note. Rule 50 provides that nothing contained in the Rules shall affect the power of the Governor to make such standing orders as may be necessary or expedient for the proper exercise of his functions particularly those under Art. 167 and 356. This rule is very wide and gives unrestricted and unlimited powers to the Governor and is open to objection.

Sd/- J.B. Dhurandhar.

M.C.M.

113-78
16/8/50.

V.M.D./16.7
4c.

Legal Department.

It is true that the Bombay Prohibition Act, 1949 prohibits the import and export of opium otherwise than accross the customs Frontier and in the Prohinition case a provision of this kind has been held to be intra vires, although it may affect inter-state commerce. But the Bombay Prohibition Act, 1949 was passed before the new Constitution came into force. Entry No. 42 in List I in the Seventh Schedule and article 302 of the New Constitution would not permit a State to enact a provision which would prohibit or affect inter-State commerce. Under article 304(b) of the Constitution, however, it would be open to the legislature of a State to impose such reasonable restrictions on the freedom of trade commerce or inter-course with or within that State as may be required in the public interest. The State of Bombay having declared its policy for a total prohibition of the use and consumptio of opium and having legislated for the purpose , it would be within the competence of the Rajasthan Government to restrict the export of opium from Rajasthan to Bombay Such restriction would not be held to be unreasonable in public interest.

Sd/- J.R.Dhurandhar.
6.9
Additional Secretary to Government.

U.R. to R.D.No. 12726, dated 6th September 1950.

V.H.D./16.7
40.

Office of the R.L.A.

Article 348 of the Constitution contemplates that the language of all proceedings in the High Court shall ordinarily be English until Parliament by law otherwise provides. Clause (2) of that article, however, empowers the Governor of a State with the previous consent of the President to authorise the use of the Hindi language or any other language used for any official purpose of the State in proceeding in the High Court having its principal seat in that State, subject of course to the proviso that this shall not apply to a judgment, decree or order passed or made by the High Court which must be in English. Under clause (2) it would be permissible to authorise the use of a regional language in a particular class of proceedings; for, the larger power applicable in respect of proceedings in general would naturally include the power in respect of any class of proceedings included therein. However, before action can be taken under clause (2) the other language (other than Hindi) must itself be used for any official purposes of the State. Whether it is so used or not would depend upon the action taken under article 345 which contemplates that the Legislature of a State may by law adopt any one or more languages in use in the State as the language or languages to be used for all or any of the official purposes of that State. So long as a regional language is not so adopted for use for any official purpose under article 345, it would not be advisible to move the President to authorise its use in respect of proceedings in the High Court.

Sd/- M.P.H.Lad.
25.9

Remembrancer of Legal Affairs.

U.R. to H.D. No. 13602, dated the 26th Sept. 1950.

V.H.D./16.7
40.

Legal Department.

Under article 205 of the Constitution, the amounts required in excess of the grants sanctioned are divided into three categories :-

(1) Supplementary expenditure,

(2) additional expenditure,

(3) demands for money spent in excess.

Accordingly the following heading is suggested for the consideration of the Finance Department . -

" Statement showing supplementary, additional and excess expenditure for the year 1950-51.

Presented to the Legislature under article 205 of the Constitution of India. "

If the statement does not include demands for excess expenditure, the reference to excess expenditure made in the above heading may be omitted.

Sd/- J.R.Dhurandhar.
23.9

Additional Secretary to Government.

U.R. to F.D. No. 13% dated the 28th September 1950.

V.M.D./16.7
40.

Office of the R.L.A.

So long as the expenditure is not charged upon the consolidated fund of the State, it will have to be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein (Article 203 of of the Constitution). It is, therefore, not legally feasible to guarantee any ex gratia pension; for, the guarantee will always be subject to the vote of the Legislature. This very question arose in the case of the Meyyiruttukkan. This very q Dagallot Cement Company, and eventually legislation was promoted for the purpose of implementing the guarantee. Such legislation is feasible under article 203(3) of the Constitution which provides in sub-clause (f) that any other xxx expenditure can be declared by the Legislature of the State by law to be charged on the consolidated fund of the State.

Sd/- P.M.Iad.
31.10.50.

Remembrancer of Legal Affairs.

T. R. to P. & S.D. No. 17901, dated the 3rd October 1950.

V.M.D./14.7
4c.

Officer of the R.L.A.

From the Legal stand-point the R.L.A. is in general agreement with the views expressed by the Chief Secretary.

The following points, however, require consideration

(A)Clause (3) of the article 16 of the Constitution contemplates legislation in this matter in respect of local or other authorities. The University is certainly not a local authority as defined in clause (29) of section 3 of the General Clauses Act which has been made applicable to the interpretation of the Constitution by article 367. The expression 'other authority' may be construed on the principle of *ejusdem generis*. Apart from such construction it is doubtful whether a University can be called an authority. In the lists in Schedule VII, Universities are described as 'Institutions'. It is, therefore, open to doubt whether the proposed legislation could cover Universities also. Moreover, it may not be expedient to extend the legislation to the Universities inasmuch recruitment under Universities should not in the interest of learning be fettered with any restrictions as to residence in the State.

(B) The proposal to confer the power on the Government of the State or local authorities to relax the requirements laid down by Parliament in the statute may not be legally feasible. The Bombay High Court has consistently taken the view (which I am myself inclined to share) that the general power of exemption without any guiding principle to regulate the exercise of discretion would be ultra vires as being a delegation of legislative power. Until the Supreme Court takes a different view, so far as Bombay is concerned, any law (even a Central Law) which purports to confer an absolute unregulated discretion of this kind for purposes of granting exemption would not be upheld in Bombay. Moreover, even from the administrative point of view it may not be desireble and may

even ....

even be embarrassing to have unqualified discretion for exemption. I would, therefore, suggest that the Act should itself lay down the categories of employment, such as specialised officers, technicians etc. in respect of whom the State Governments may be given the power to exempt. It is a matter for Government's consideration whether even this restricted discretion should be entrusted to the local authorities or whether the exercise of discretion by them should be subject to the control of the State Government. If the services under the local authorities are to be made subject to the rule of residence, it may be necessary, as a matter of caution, to add a proviso that the rule shall not apply in the cases of appointments made under local authorities from all-India services.

(C) Clause (β) of Article 16 permits a law which can impose the requirements as to residence within that State. It is doubtful whether this would entitle Parliament to make a law permitting any State (as in the case between Saurashtra and Bombay) to adopt residence in another State as residence in the State concerned. If the power of general relaxation cannot be conferred as stated in paragraph (B) above, the only alternatives appear to be either to impose no requirement as to residence in a State like Saurashtra or to apply that requirement uniformally (subject to the excepted categories) in respect of all other States.

Sd/- P.N.Lal.
11.10

Remembrancer of Legal Affairs.

V.M.D./16.7
4c.

Legal Department.

The executive instructions contained in Circular Memorandum No. 1575/34 dated the 15th August 1949 merely state that expenses incurred in connection with the marriage of an European, Anglo-Indian or Indian Christian subscriber to the Provident Fund are not obligatory within the meaning of the Provident Fund Rules. The Memorandum as worded would be held to amount to discrimination on the ground of religion or race only and would offend against Article 15(1) of the Constitution. It is possible that this discrimination may have been based on the habits and customs of these communities. But the Memorandum does not make any reference to that factor. In a recent case relating to the Medical College, the Madras High Court has held that even an executive order offending against the Fundamental Rights is bad. In these circumstances, it will not be legal to refuse the applicant's request for an advance from the Provident Fund on the ground of the orders in the Circular Memorandum.

Sd/- J.R. Dharandhar.
26.10

Additional Secretary to Government.

U.R. to P. & P.D. No. 2314 dated the 26th October 1950.

V.M.D./17.7
40.

Office of the R.L.A.

The interpretation of Article 20 of the Constitution is involved in a case now pending in the High Court. However, the view taken by the Deputy Secretary, Home Department, in his note at pages 15-16 ante seems to be correct and it does not appear that the petitioner can invoke the provisions of Article 20(2) of the Constitution.

Sd/- P.M.Lad.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 15725, dated the 11th November 1950.

V.M.D./17.0
40.

Office of the R.L.A.

Constitution of India, article 29(2) : Whether Government can grant aid to the Seth Chunilal Sankalchand Jain Kanya Shla, Patan, District Mehsana.

Para (2) of Article 29 of the Constitution provides that n citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, or caste. If Government gives thax grant in aid to the Kanya Shala at Patan the school will have to be kept open to girls belonging to any community. Since the institution caters only for the needs of girls belonging to the Jain Community it would be unconstitutional for Government to offer to it aid out of the State funds.

Sd/- P.M.Lad.
13.11

Remembrancer of Legal Affairs.

U.R. to E.D. No. 15846 , dated the 14th November 1950.

V.M.D./17.7
40.

Office of the R.L.A.

Article 28(1) of the Constitution, which is more relevant to the question under consideration, provides that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. Clause (2) of that Article, however, provides that nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. It is presumed that the Vaidik School, Kolhapur, has not been established under any endowment or trust of the kind described in clause (2) of Article 28. It would not be feasible hereafter to maintain the institution wholly out of State funds. There will be no constitutional objection for giving financial aid to the institution so long as it is not wholly maintained out of State funds and so long as admission is not denied on the ground of religion, race, caste, language or any of these as required by clause (2) of Article 29.

Sd/- P.M.Lad.
15.11

Remembrancer of Legal Affairs.

U.R. to E.D. No. 815-Confl. dated 16th November 1950.

V.M.D./17.7
&c.

Office of the R.L.A.

Constitution of India. Article 285

Govt. of India Act, 1935, Section 154 Liability of Union Property to taxes imposed by the State Government.

Attention of the Home Department is invited to article 285 of the Constitution which makes provision on the lines of section 154 of the Government of India Act, 1935. Under clause (1) of that article the property of the Union, save in so far as Parliament may be law otherwise provide, in exempt from all taxes imposed by a State or by any authority within a State, Clause (2) of that article however provides that nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which property was, immediately before the commencement of the Constitution, liable or treated as liable, so long as that tax continues to be levied in that State. It will be observe therefore that the position of law as explained in R.L.A's opinion No. 12187 dated 24.11.1939 has not changed. If therefore any vehicles or any class of vehicles belonging to the Government of India were, before 26th January 1950, being taxed with a provincial tax, there would be no objection to continuing the levy of that tax, until the Parliament by law otherwise provides.

Sd/- P.N.Lad.
23.2

Remembrancer of Legal Affairs.

U.O. to H.D. No. 13231 dated the 27th December 1950.

V.M.D./17.9
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